HRUBETZ OIL CO.

IBLA 85-403 Decided September 11, 1986

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting in part oil and gas lease offer C-38076.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant;
Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Hrubetz Oil Company has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 24, 1984, rejecting in part oil and gas lease offer C-38076. BLM rejected appellant's offer to lease part of the lands in C-38076 because the rejected lands were determined to be within an unnamed and undefined known geologic structure (KGS).

Appellant's lease application for parcel CO-310 1/ was drawn with first priority on July 6, 1983, in the May 1983 list of parcels available for

1/ Parcel CO-310 contained the following lands:

T. 45 N., R. 15 W., New Mexico Principal Meridian.

Sec. 23: N 1/2 SW 1/4, SE 1/4 SW 1/4, W 1/2 SE1/4, SE 1/4 SE 1/4 Sec. 24: SW 1/4 SW 1/4 Sec. 25: SW 1/4 NE 1/4, NW 1/4, S 1/2
San Miguel County 800 acres

Of these lands, BLM determined the S 1/2 SW 1/4 and the SE 1/4 sec. 25 were within the KGS at issue.

simultaneously filed oil and gas lease applications. Parcel CO-310 described a total of 800 acres, including the 240 acres later determined to be within the KGS at issue. On February 2, 1984, BLM sent appellant a lease offer form (serial number C-38076) to be completed by appellant and returned with the required rental ($ 800) within 30 days. This communication also informed appellant that all or part of parcel CO-310 was within the Hamilton Unit Agreement and appellant should file evidence with BLM that it had joined this agreement or state why it failed to do so. Appellant was granted 60 days to complete this task, and the record reveals BLM received appellant's ratification and jointer of the Hamilton Unit Agreement on April 9, 1984. In addition, appellant timely complied with BLM's requirement to complete and return lease offer C-38076, together with the rental due.

Meanwhile, on January 25, 1984, the initial Hamilton Unit well, No. 1-36H State, was completed in the same township containing the unleased parcel CO-310. An initial participating area, including part of parcel CO-310, was approved by BLM on July 9, 1984, effective January 25, 1984. The discovery of gas in well No. 1-36H State caused BLM to include part of the lands described in CO-310 within an unnamed, undefined KGS, effective November 26, 1984. Shortly thereafter, the decision on appeal issued, rejecting appellant's noncompetitive offer to lease those lands within the KGS.

BLM relies upon section 17 of the Mineral Lands Leasing Act, 30 U.S.C. § 226(b) (1982), as authority for its rejection of the 240 acres at issue. Section 226(b) provides that any lands within a KGS shall be leased to the highest, responsible, qualified bidder by competitive bidding. In addition, BLM points to 43 CFR 3112.5-2(b), which provides:

> If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

In its statement of reasons, appellant contends that but for BLM's protracted delay in processing lease offer C-38076, the lease would have been issued to appellant on a noncompetitive basis. Although appellant notes the lease file does not reflect the reason for the initial processing delay, subsequent delay, appellant acknowledges, was caused by the Department's "Notice of Suspension of Simultaneous Oil and Gas Leasing Lottery and Suspension of Posting of Available Lands," 48 FR 49703 (Oct. 27, 1983), announcing, inter alia, that leases not processed to completion prior to October 12, 1983, would not be issued until it was determined they were not located within a KGS. This suspension period was not justified in the instant case, appellant contends, because parcel CO-310 was not on a KGS in May 1983, during the filing period, or on July 6, 1983, when appellant was determined to be the first qualified applicant, or on October 27, 1983, when suspension of lease processing occurred. Appellant contends fairness and equity should compel this Board to direct that the balance of lease offer C-38076 be issued to it.

[1] It is well established that a noncompetitive oil and gas lease application must be rejected if, prior to issuance of the lease, the land

applied for is designated as within a KGS. David R. Wilson, 90 IBLA 7 (1985), and cases cited therein.

The Solicitor's response to appellant's statement of reasons quotes from E. B. Joiner, 78 IBLA 323, 325 (1984):

> Contrary to appellant's wishes, the long BLM delay in acting on his offers does not entitle him to leases. The Secretary of the Interior is invested by the Mineral Leasing Act of 1920 with discretionary authority to lease or not to lease Federal public land which is otherwise available for oil and gas leasing. Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960); Dorothy Langley, 70 IBLA 324 (1983); Justheim Petroleum Co., 67 IBLA 38 (1982). The mere fact that appellant's oil and gas lease offers were pending at a time when the land was available for leasing does not invest the offeror with any legal or equitable title, claim, interest, or right to receive the lease where, during the pendency of the offer, the land becomes unavailable to such leasing either by reason of the exercise of Secretarial discretion or by operation of law. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Udall v. Tallman, [380 U.S. 1, 4 (1965)]; McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Schraier v. Hickel, supra at 666; D. R. Gaither, 32 IBLA 106 (1977) aff'd sub nom. Rowell v. Andrus, Civ. No. 77-0106 (D. Utah Apr. 3, 1978), aff'd in part and rev'd in part on other grounds, 631 F.2d 699 (10th Cir. 1980).

There is no time limit within which a decision to reject a lease offer or issue of a lease must be made. Angelina Holly Corp. v. Clark, 587 F. Supp. 1152, 1156-57 (D.D.C. 1984). Thus, there is no right to the issuance of a lease prior to BLM's KGS determination, regardless of the delay in making the determination. Joseph A. Talladira, 83 IBLA 256 (1984). Further, it is well settled that the Department has no authority to issue a noncompetitive lease for lands within a KGS. McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1974).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge.